IN THE
SUPREME COURT OF THE UNITED STATES

October term, 1977

76-1117

No._____, Misc.

ARCHIE PELTZMAN, PETITIONER,

v.

IRVING R. KAUFMAN,
CHIEF JUDGE, RESPONDENT.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS, AND BRIEF IN SUPPORT THEREOF

Archie Peltzman
Petitioner, Pro Se,
c/o Eve Katz
2483 W. 16th St.
B'klyn, N.Y. 11214

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MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

The petitioner moves the Court for leave to file the petition for a writ of mandamus hereto annexed; & further moves that an order & rule be entered & issued directing the Honorable The United States Court of Appeals For the Second Circuit, & the Honorable Chief Judge, Irving R. Kaufman of that Court, to show cause why a writ of mandamus should not be issued

against them in accordance with the prayer of said petition, & why your petitioner should not have such other & further relief in the premises as may be just and meet.

Archie Peltzman
Petitioner, Pro Se
c/o Eve Katz
2483 W.16th St.
B'klyn, N.Y. 11214

IN THE
SUPREME COURT OF THE UNITED STATES

October term, 1977

No._____,Misc.

ARCHIE PELTZMAN, PETITIONER,

v.

IRVING R. KAUFMAN,
CHIEF JUDGE, RESPONDENT.

PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, & THE HONORABLE IRVING R. KAUFMAN, CHIEF JUDGE OF THAT COURT.

OPINIONS BELOW

No opinion was filed by the Court of Appeals.

Petitioner was informed by letter (Appendix a) January 17, 1977, from pro se clerk that Circuit Court would not docket appeal without fifty dollar fee or an oath

of forma pauperis.

No opinion was filed by District Judge in denying a Rule 60(b) motion to vacate a final judgment, on grounds of fraud on the Court by attorneys, perjury by witnesses, & newly discovered evidence.

JURISDICTION

1. The jurisdiction of this Court is invoked under 28 U.S.C. Sec 1651(a) 1946, & Article 111 Sec 2, of U.S. Constitution. Ex parte Peru, 318 US 578, (1943), Adams v United States ex rel. McCann 317 US 269, (1942). Rule 54 of Rules of Supreme Court.

Notice of appeal from District Court's decision was filed December 13, 1976. The partial record was brought up to the Court of Appeals on December 30, 1976, & a temporary docket nr of T-6853 was given to petitioner. (District Court Clerk is searching for the lost documents).

2. The jurisdiction of this court is invoked under the inherent jurisdiction which all Courts have to protect the integrity of the judicial process, & under the supervisory powers of this Court on the lower Courts. Hazel-Atlas-Glass Co. v Hartford-Empire Co. 322 US 238, 1943.

QUESTIONS PRESENTED

1. Did the Court of Appeals for the second circuit have the power to demand a docketing fee, or an oath of forma pauperis from a seaman, who sued a steamship company for wrongful discharge, & who had previously had his case docketed in this Court, & in the Court of Appeals without paying the docket fee?

2. Does Rule 54 of Rules of the Supreme Court also apply to Courts of Appeal in all Circuits?

STATEMENT

1. On November 23, 1976, petitioner filed a 60(b) motion in District Court that had previously granted summary judgment twice in a seaman's action for wrongful discharge, dismissing his complaint, & seeking to vacate such final judgment on grounds of fraud by attorneys, newly discovered evidence, & perjury by witnessess.

2. On November 24, 1976, District Court denied such motion, without opinion & this was entered in docket file on November26, 1976.

3. The motion consisted of an affidavit of seven pages, a legal memorandum of eleven pages, & partial excerpts of six pages of a separate Appendix which contained ninety-nine pages of Court documents from previous Court actions in State Court, Federal Court & U.S. Supreme Court. (R41) (this separate appendix has been lost in District Court.)

4. On December 3, 1976 defendant Central Gulf Lines, filed an affidavit in opposition, with two exhibits which were the District Court's opinion in the second summary judgment motion, & the second circuit Court of Appeals second decision after remand. (R42)

5. On December 7, 1976, petitioner filed reply pleadings. (R43)

6. On December 13, 1976, petitioner filed notice of appeal to second circuit Court of Appeals in District Court.

7. District Court clerk informed petitioner the record was in warehouse & h^{e} would endeavour to get the record in about a weeks time.

8. On December 30, 1976, the record in District Court, minus the missing exhibits & other documents were filed in the Court of Appeals, & petitioner was given a temporary docket nr T-6853, without paying the

docketing fee in District Court or the Court of Appeals, after explaining to both clerks that this action had been previously appealed without payment of docketing fees.

9. On January 17, 1977, petitioner filed a motion in Court of Appeals seeking a summary reversal of District Court's denial of his Rule 60(b) motion.

10. By letter dated January 17, 1977, from pro se clerk, petitioner was notified that his motion would not be filed absent the docket fee or an oath of forma pauperis.

Petitioner contends that the refusal of the second circuit Court of Appeals to docket a seaman's case which had previously been appealed without payment of the fee, both in this Court & in the second circuit, prevents consideration of the fraud on the Court charged in petitioner's motion,

without consideration of the type of evidence on which the petitioner intended to rely, & prevents any effective action which Rule 60(b) was enacted to correct,& constitutes both an abuse of judicial power & abnegation of judicial duty & a means of defeating this Court's appellate jurisdiction, in a manner not remediable through the ordinary course of appeal. The ruling of the Court of Appeals is therefore one which this Court can & should correct by writ of mandamus.

REASONS FOR GRANTING THE WRIT

1. There is no other feasible way to review judicial disregard of the federal statute 28 USC Sec 1916, except by a writ of mandamus.

2. The second circuit Court of Appeals has decided an important question, concerning the power of circuit Courts of Appeal to prevent appeals being docketed by a

seaman without prepayment of costs & fees, in a way which is prohibited by statute, & is contrary to established custom & practice by this Court & every other Circuit Court of Appeals, including the second circuit.

3. The decision by the second circuit in refusing to docket appeal by a seaman was wrong, & negates the Congressional policy protecting seamen in over one hundred statutes enacted for their protection. It constitutes an usurpuation of power not conferred on the Court to pick & choose which seamen's cases shall be docketed without prepayment of fees & costs.

POINT 1

THERE IS NO OTHER FEASIBLE WAY TO REVIEW JUDICIAL DISREGARD OF THE FEDERAL STATUTE 28 USC Sec 1916, EXCEPT BY A WRIT OF MANDAMUS.

It is an elementary rule that a writ of mandamus may be used to require an

inferior court to decide a matter within its jurisdiction & pending before it for judicial determination, but not to control its decision. Ex parte Flippin, 94 US 350; Ex parte R. Co. 101 US 720; Ex parte Burtis 103 US 238.

In McClellan v. Carland 217 US 268, (1910) it was recognized that mandamus became available where the decision of the lower court might otherwise defeat appellate jurisdiction-

"We think it is the true rule that where a case is within the appellate jurisdiction of the higher court, a writ of mandamus may issue in aid of appellate jurisdiction which might otherwise be defeated by the unauthorized action of the court below."

The sole function of the writ is to require the court to act where it has refused to do so. Ex parte Davenport 6 Pet

(US) 661; Ex parte Newman, 14 Wall (US) 152, Virginia v. Rines 100 US 313.

The traditional use of"mandamus" in aid of appellate jurisdiction, both at common law & in federal courts, has been to confine an inferior court to lawful exercise of its prescribed jurisdiction, or to compel it to exercise its authority when it is its duty to do so. In Roche v. Evaporated Milk Assn. 319 US 21, (1943).

POINT 11

THE SECOND CIRCUIT COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION, CONCERING THE POWER OF CIRCUIT COURTS OF APPEAL TO PREVENT APPEALS BEING DOCKETED BY A SEAMAN, WITHOUT PAYMENT OF COSTS & FEES, WHICH IS AUTHORIZED BY STATUTE, & HAS BEEN THE PRACTICE & CUSTOM IN THIS COURT & EVERY OTHER CIRCUIT COURT OF APPEALS, INCLUDING THE SECOND CIRCUIT.

In Thielebeule v. Nordsee Pilot 1972 AMC 50-

Where two statutory provisions conflict, the specific provision must be deemed to control over the general one.

In light of the Congressional policy underlying provisions of the Judicial Code dealing with seamans action in general, & 28 USG Sec 1916 in particular, Sec 1916 must be read as exempting seaman from prepaying the "expenses" listed in Sec 1921-Reversed, J Hays, Moore, & Mulligan (2^{d}Cir).

The court below was not authorized to circumvent, by demanding a docket fee, or an oath of forma pauperis, the policy established by Congress, in Title 28 Sec 1916, that seamen may proceed without prepayment of fees or costs or furnishing security therof. See petitioner's previous appeals in this Court & 2nd circuit where fees were not paid. Peltzman v.

Central Gulf Lines 497 F2d 332 (2d Cir 1974) aff'd following remand, 523 F2d 96 (2d Cir 1975) cert den, 423 US 1074, 1976, rehearing den 424 US 979, 1976.

POINT 111

THE DECISION BY THE SECOND CIRCUIT IN REFUSING TO DOCKET APPEAL BY A SEAMAN WAS WRONG, & NEGATES THE CONGRESSIONAL POLICY PROTECTING SEAMEN IN OVER ONE HUNDRED STATUTES ENACTED FOR THEIR PROTECTION. IT CONSTITUTES A USURPATION OF POWER, NOT CONFERRED ON THE COURT TO PICK & CHOOSE WHICH SEAMAN'S CASE SHALL BE DOCKETED WITHOUT PREPAYMENT OF FEES & COSTS.

See Michigan Law Review Vo 52 479-, 1954-Norris- "Seaman as Wards of Admiralty", containing statutory, historical & decisional basis for rejecting 2nd circuits refusal to docket petitioner's case, as being contrary to the spirit, letter & statutes of the general maritime law.

In Bulk Carriers v Arquelles 400 US 358, 1971, this Court has held that the statutory sections of the General Maritime Law controls a seaman's employment & conditions of employment.

In La Buy v. Howes Leather Co 352 US 249, "district judge displayed a persistent disregardof the Rules of Civil Procedure promulgated by this Court" as to which mandamus was a proper remedy "as a means of policing compliance with the procedural rules." Will v. US 389 US 96.

See US Alkali Export Assn. v. US 325 US 196, 1945-ordinary hardship to litigant plus "frustration of Congressional Policy" justifies writ of Kanatser v. Chyrsler Corp 199 F2d 610,(1952) cert den 344 US 921, 1953.

See Ex parte Abdu 247 US 27, 1918- Clerk of Court of Appeals declined to file record without deposit to secure costs &

see Semel v. US 158 F2d 231, 1946, application to require district clerk to transmit notice ofappeal.

Object of"mandamus" is to enforce duty which law requires respondent to perform. Hazen v. Hardee 78 F2d 230.

Finally petitioner argues that the integrity of the judicial process & the due process owed to a litigant who is charging that his pleadings have been ignored both in District Court & in the second appeal in Circuit Court of Appeals, that fraud on the court has been practiced by attorney's involved in this case, with an abnegation of the judicial responsibility to inquire & protect the integrity of the court's proceedings.

Prof. Moore defines "fraud upon the Court" as "that species of fraud perpetrated by officers of the Court so that the judicial machinery can not perform in the usual manner its impartial

task" (7 Moore Sec 60:33 at 512).

See Hazel-Atlas Glass Co v.Hartford-Empire Co (supra). See petitioner's Reply Brief in Peltzman v. Central Gulf Lines, October term 1975 US Supreme Court, No 75-782 for specifics of issues of fraud, perjured testimony, & a blatant disregard of the Federal Rules of Civil Procedure & Summary Judgment Rule (p 5).

CONCLUSION

Wherefore, petitioner prays:

1. That a writ of mandamus issue from this Court directed to the Honorable US Court of Appeals for the second circuit, & to the Honorable Chief Judge Irving R. Kaufman, of said court, requiring said Honorable Irving R. Kaufman, to show cause on a day to be fixed by this court why mandamus should not issue from this court directing said Honorable Irving R. Kaufman, to docket petitioner's appeal & to consider his motion for a summary

reversal of the District Courts decision denying his motion to vacate a final judgment under Rule 60(b).

2. That petitioner have such additional relief & process as may be necessary and appropriate in the premises.

Respectfully submitted

Archie Peltzman
Archie Peltzman
Petitioner, Pro Se

February 2 ,1977

APPENDIX A

DANIEL FUSARO
CLERK

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

January 17, 1977

Archie Peltzman
c/o Eve Katz
2428 W. 16th Street
Brooklyn, New York 11214

Re: T-6853

Dear Sir:

This will acknowledge receipt of your motion papers dated January 17, 1977.

Please be advised that we are unable to file them absent a check for $50.00 or a motion for leave to proceed in forma pauperis. We will retain your appellate papers in our files awaiting advice from you.

Sincerely,

Olga Valentine

opv

Olga Valentine
pro se law clerk's office

No. 76-1117

In the Supreme Court of the United States

OCTOBER TERM, 1976

ARCHIE PELTZMAN, PETITIONER

v.

IRVING R. KAUFMAN, CHIEF JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ON MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND ON PETITION FOR A WRIT OF MANDAMUS

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1117

ARCHIE PELTZMAN, PETITIONER

v.

IRVING R. KAUFMAN, CHIEF JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ON MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND ON PETITION FOR A WRIT OF MANDAMUS

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner seeks mandamus against Irving R. Kaufman, Chief Judge of the United States Court of Appeals for the Second Circuit, in connection with a letter from an individual in the office of the *pro se* law clerk for that circuit (see Pet. App. A) indicating that an appeal brought by petitioner would not be docketed unless he paid a docketing fee or filed a motion for leave to proceed in forma pauperis. Petitioner claims that he qualifies for a waiver of the docketing fee under 28 U.S.C. 1916, which provides that

"[i]n all courts of the United States, seamen may institute and prosecute suits and appeals * * * for wages * * * without prepaying fees or costs * * *."[1]

As the attached letter and docket sheet show (Apps. A and B, *infra*), there was an error in the handling of petitioner's appeal that now has been corrected. The determination whether petitioner's appeal arises under 28 U.S.C. 1916 should be made by the court of appeals. Here no such determination was made because the individual in the *pro se* law clerk's office who wrote petitioner informing him that the appeal would not be docketed was unaware that the appeal might properly be viewed as arising under that statute (App. A, *infra*). Petitioner has been informed of the mistake (*ibid.*) and his papers have been docketed as a motion for leave to proceed under 28 U.S.C. 1916 (App. B, *infra*). That motion will be decided by the court of appeals in due course.

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[1]Petitioner's appeal stems from a suit he earlier had brought in federal district court against his former employer, Central Gulf Lines, Inc., a steamship company (the United States was not a party to the suit). Petitioner claimed that Central Gulf Lines had unlawfully acceded to a union request that petitioner be discharged for failing to pay a $2,000 union initiation fee. The district court granted summary judgment against petitioner, but the court of appeals remanded to the district court for consideration of whether the fee was uniformly demanded from those in petitioner's position and whether petitioner had in fact been a member of the union at the time of his discharge. *Peltzman* v. *Central Gulf Lines, Inc.*, 497 F. 2d 332 (C.A. 2).

On remand, the district court determined after a hearing that the steamship company was entitled upon the undisputed facts to dismissal of the complaint as a matter of law. Petitioner again appealed and the court of appeals affirmed. *Peltzman* v. *Central Gulf Lines, Inc.*, 523 F. 2d 96, certiorari denied, 423 U.S. 1074, rehearing denied, 424 U.S. 979.

On November 23, 1976, a year after the final order of the district court, petitioner filed a motion under Rule 60(b), Fed. R. Civ. P. The motion was denied, and petitioner then filed the notice of appeal that is the subject of the instant petition.

Under these circumstances, there is no need for the extraordinary relief that petitioner seeks in this Court. The letter informing him that the appeal would not be docketed effectively has been withdrawn. The matter presently is pending before the court of appeals.[2]

It therefore is respectfully submitted that the motion for leave to file a petition for a writ of mandamus should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

MAY 1977.

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[2]If the court grants the motion, the appeal will go forward without payment of the fee. If the motion is denied, petitioner may be able to proceed by paying the $50 fee or, if the appeal is dismissed with prejudice, he may seek review in this Court by filing a petition for a writ of certiorari.

DOJ-1977-05

APPENDIX A

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

A. DANIEL FUSARO
CLERK

May 4, 1977

Mr. Archie Peltzman
c/o Eve Katz
2428 W. 16th Street
Brooklyn, N.Y. 11214

Dear Mr. Peltzman,

On behalf of this office, I would like to apologize for the improper treatment which your request to proceed under the Jones Act (28 U.S.C. §1916) received. I would also like to explain the unfortunate sequence of events and tell you what has been done to rectify the mistake.

When you filed papers with this Court urging reversal of Judge Knapp's denial of your Rule 60(b) motion, it was the first time in the history of your litigation with Central Gulf Lines, Inc. that you requested leave to proceed under the Jones Act. The only connection Ms. Valentine previously had with §1916, as well as the fact your previous appeals had not proceeded under §1916, led her to conclude that you were not now entitled to so proceed. Without consulting the *pro se* law clerks or any member of this Court, Ms. Valentine sent you the January 17, 1977 letter informing you that you either had to pay the $50 docketing fee or move for leave to proceed in forma pauperis.

Ms. Valentine did not realize the §1916 also covers some seamen's suits that arise out of wage disputes. Whether

your claim against Central Gulf is one of those suits is a question for this Court to determine. It may turn out that your action is not encompassed by §1916, but again, the Court should make that determination. You have presented at least a colorable claim under §1916 and it is our intention to have the Court resolve the question. To that end, we are construing the papers you attempted to file as follows:

> "Leave to proceed under §1916 without prejudice to the paying of the $50 docketing fee should §1916 relief be denied."

The motion will be submitted to the Court within the next two weeks. Should the Court grant you leave to proceed under §1916, a scheduling order will issue, and you may simply submit your "summary reversal" papers as your brief. If the Court should deny §1916 relief, you may then pay the $50 docketing fee and a scheduling order will issue. (Ordinarily, you could move for leave to proceed in forma pauperis if §1916 relief were denied, but you indicated that your financial situation would not warrant consideration for forma pauperis relief.)

I hope this clears the way for your appeal. If you have any questions. don't hesitate to call this office.

Again, I am sorry for the delay you have experienced in trying to perfect your appeal. Please understand that the mistake was inadvertent, and, we hope, quickly corrected.

Sincerely yours,

S/ Deborah Hazen

Deborah Hazen
pro se clerk

APPENDIX B

GENERAL DOCKET

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

77-8201
T-6853

DATE	FILINGS - PROCEEDINGS
12-14-76	Filed copies of docket entries and notice of appeal
12-14-76	Archie Peltzman, Pro Se filed form C
12-14-76	Archie Peltzman, Pro se filed form D
12-20-76	Filed affidavit of service for Forms C and D, appellant
12-30-76	Received record (original papers of district court)
1-17-77	Received motion for summary reversal of the decision denying appellant motion to vacate, etc., p/s
4-18-77	Received supplemental record (original papers of district court)
5-4-77	Filed motion for leave tg proceed under §1916 (the Jones Act) without prejudice to the paying of the $50.00 docket fee should 1916 relief be denied (in connection to appeal from denial of a RULE 60(b) motion)

IN THE
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OCTOBER TERM, 1976

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IRVING R. KAUFMAN,
CHIEF JUDGE, RESPONDENT.

ON MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND ON PETITION FOR A WRIT OF MANDAMUS

REPLY BRIEF FOR PETITIONER

Archie Peltzman
Petitioner, Pro Se
c/o Ev Katz
2483 W 16th St
B'klyn, N.Y. 11214

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM,1976

No.76-1117

ARCHIE PELTZMAN,PETITIONER

V.

IRVING R.KAUFMAN,CHIEF JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

ON MOTION FOR LEAVE TO FILE A PETITION FOR A WRIT OF MANDAMUS AND ON PETITION FOR A WRIT OF MANDAMUS

REPLY BRIEF FOR PETITIONER IN SUPPORT OF MOTION

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1. The questions presented in this motion have not been rebutted by the respondent . There is no rebuttal to the list of cases supporting petitioner's argument that the

demand for a docket fee from a seaman who had previously appealed twice in the second circuit Court Of Appeals in the same cause of action,& against the same defendant ,(without paying the docket fee) was a usurpation of power which this Court under it's supervisory powers should correct.

"The supplementary review powerconfered on courts by Congress in the all writs act is meant to be used only in the exceptional case where there is a clear abuse of discretion or usurpation of judicial power" Bankers Life& gas co.v Holland 346 US 379.

"Extraordinary writs are reserved for really extraordinary causes,& then only to confine an inferior Court to a lawful exercise of it's prescribed jurisdiction, or to compel it to exercise it's authority when it is it's duty to do so.Platt v

Minnesoto Mining & Mfg.Co. 376 US 24. See Harris v Nelson 394 US 286 (rehearing denied 394 US 1025-All Writs Act-designed to achieve rational ends of Law.

2. Respondent alleges the pro se clerk made an error in the handling of petitioner's appeal that now has been corrected.Petitioner argues that respondent's insistence on deciding the issue of payment of the docket fee is still an error since this issue has been decided twice in this action in petitioner's favor and the statute Title 28 Sec.1916 is not ambiguous or open for interpretation since 1932 when Bainbridge v Merchants Transportation Co 287 US 280 was decided and there held that seaman's docket fee was returnable because the Jones Act was enacted for seamens health & safety..In addition this case concerns initiation fees,& dues demanded from a seaman contrary to Title 46 Sec

599(a) ,which forbids anyone from demanding payment from a seaman for providing him with employment.The Federal Labor Laws also forbid payment of dues until employee joins a union.See Classified Index of NLRB decisions requiring non-members to pay referal fees not reasonably related to services.Laborers Local 573 (F.F. mengel Construction Co.196 NLRB No 062.(by insisting as condition of referral that nonmembers agree to immediate deduction of "working dues",and collecting dues from employees denied membership)

3.Petitioner refers to Rule 25 of Federal Rules of Appellate Procedure Oct.1972.Filing & Service-(a)-Filing-Papers required or permitted to be filed in Court Of Appeals should be filed with clerk.

Rule 47 Of Appellate Procedure provides... In all cases not provided for by rule,the Courts of Appeals may regulate their practice in any manner not inconsistent with

these rules..Petitioner argues that allowing a pro se clerk to make a determination delegated to the clerk of the Court is inconsistent with the above rules,& the error whether by pro se clerk or clerk of the Court or counsel or Judge should be corrected as soon as possible.

"Where federally protected rights have been invaded,Courts will be alert to adjust their remedies so as to grant the necessary relief".Bell v Hood 327 US 68,13ALR 2d 383 ,1946.

"The Supreme Court has broad supervisory powers over judgments of lower Federal Courts,US v Munsengwear 340 US 36,1950. See Washington v Davies 96 Supreme Court 2040-erroneous application of statutory standards.(plain error rule).

See Norton v Matthews,96 Supreme Court 2771-...Supreme Court retains power to make such corrective order as may be appropiate to the enforcement of the

limitations imposed by statute.

4.Finally,Petitioner argues that Maritime Law controls this case.Petitioner signed articles for three separate foreign voyages, each for one years duration or less if the vessel returned to a continental port in US. In effect he had a statutory contract of one years duration on three separate voyages,with all the protection under the maritimelaw against discharge for any cause except related to the faithful discharge of his duties aboard ship.

Both company & union claim that under the bargaining agreement petitioner after thirty days must join the union,pay the initiation fee,& dues,or be discharged from his job because he would be in violation of the agreement.

Since such a construction of this case in effect repeals the maritime law,& makes it null & void,the substantive issue here is which law controls a seaman's employment?

This Court ruled in June 1976,that Maritime Law,& Federal Labor Law controlled a seaman's employment, and that state law was not controlling ,since seaman's job situs was on the high seas.Oil Chemical & Atomic Workers v Mobil Oil Corp,reversing 504 F2 272 43 LW 3226.

Conclusion

As set forth in petitioner's motion for leave to file petition for writ of mandamus, & brief in support therof,the motion & the relief requested therin should be granted, with such additional relief & process as may be necessary & appropiate in the premises.

Respectfully submitted

Archie Peltzman

May 24, 1977 Archie Peltzman.Pro Se